

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	WC Docket No. 05-337
Seeks Comment on Long Term, Comprehensive	)	
High-Cost Universal Service Reform	)	

COMMENTS OF THE  
NEW JERSEY BOARD OF PUBLIC UTILITIES<sup>1</sup>

The New Jersey Board of Public Utilities (“Board”) submits the following comments in response to the Public Notice (“Notice”) released by the Federal-State Joint Board on Universal Service (“Joint Board”) on May 1, 2007.<sup>2</sup> In this Notice, the Joint Board seeks comment on various proposals to reform the high-cost universal service support mechanisms.<sup>3</sup> The Joint Board specifically seeks comment on the following issues and proposals: 1) the use of reverse auctions to determine high-cost universal service support; 2) the use of geographic information systems (“GIS”) technology and network cost modeling to better calculate and target support at more granular levels; 3) disaggregation of support; 4) the methodology for calculating support for competitive eligible

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<sup>1</sup> Commissioner Frederick F. Butler did not participate in the deliberation or vote in this matter.

<sup>2</sup> *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45, Public Notice, FCC 07J-2 (Fed.-State Jt. Bd., rel. May 1, 2007).

<sup>3</sup> *Id.* at 1.

telecommunications carriers (“ETCs”); and 5) whether universal service funding should be used to promote broadband deployment.<sup>4</sup> The Joint Board also issued a companion *Recommended Decision* on May 1, 2007, recommending that the Federal Communications Commission (“FCC” or “Commission”) take immediate action to rein in the explosive growth in high-cost universal service support disbursements by imposing an interim, emergency cap on the amount of high-cost support that competitive ETCs may receive.<sup>5</sup>

## SUMMARY

The Board welcomes the opportunity to express our views on this latest request for comments related to the Federal Universal Service Fund (“USF” or “Fund”). In previous comments, this Board had continually and consistently implored the Commission to develop and implement significant structural changes to the Fund so that the burden of supporting this program applies in a more equitable manner. Specifically, this Board recommends that contributions be made by all that benefit from the current and future telecommunications networks regardless of the technology utilized to access the network and that contributions should be based on working telephone numbers and/or connections. As described in more detail below, distributions should be limited to

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> Recommended Decision, *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 07J-1 (Fed.-State Jt. Bd., rel. May 1, 2007) (*Recommended Decision*).

only those consumers and service providers who are truly in need and only to ensure affordable access.

We applaud the Recommended Decision of the Joint Board which proposes that the Commission immediately implement an interim cap on high cost support provided to competitive ETCs. We view this as a step in the right direction, however, as the Board has argued in the past, the entire high cost fund must be capped and then reduced. As we have stated, the current program has grown beyond the intent of the Fund's stated goal of ensuring the availability of affordable telephone service for all Americans who wish to have such service.

As indicated in Appendix A which is attached to the *Recommended Decision*, the high cost portion of the Fund has grown exponentially in the last several years, with the bulk of the growth coming from payments to competitive ETCs.<sup>6</sup> It is expected that this growth will subside with the implementation of the recommended cap for that portion of the high cost fund. This action alone is beneficial to consumers in net contributor states such as New Jersey, who already pay more than their fair share to support universal service. It will begin the process of eliminating the inappropriate use of the USF as a tool to stimulate competitive entry, but more needs to be done. According to Commission reports, in 2005, New Jersey contributed 3.73% of the total fund, but received only 0.85% of the monies distributed from the Fund, for a net contribution in excess of \$190 million. This burden on our consumers must be reduced. The consumers in

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<sup>6</sup> “. . . in the six years from 2001 through 2006, competitive ETC support grew from \$15 million to almost \$1 billion – an annual growth rate of over 100 percent.” *Recommended Decision* at ¶4.

more urban states such as ours should not be expected to continue to subsidize telephone service for rural consumers from a small number of states. The concerns of net contributor states must be considered at this critical point in time.

This Board is disappointed that a net recipient state representative was chosen to fill the recent vacancy on the Joint Board due to the retirement of a representative from a net contributor state. Nonetheless, we will continue to advocate for our consumers and those of other net contributor states. It is encouraging to read the statement of Chairman Lisa Polak Edgar of the Florida Public Service Commission, attached to the *Recommended Decision*, which is entirely consistent with the concerns and position of this Board. Chairman Edgar stated:

“The current support mechanisms must be reformed to reduce excessive support to multiple providers and better target financial support as envisioned by the Telecommunications Act of 1996. Funding redundant providers is particularly troubling for consumers in net-contributor states, who shoulder the burden of undue growth in the high-cost fund.”

As already noted, the Board believes that the Joint Board recommendation for an immediate cap is a step in the right direction, however, as discussed in more detail in our comments in response to the May 14, 2007 NPRM issued by the FCC, the entire high cost fund should be capped.<sup>7</sup> More drastic reform of the high cost fund is necessary and as described below in our response to the Notice, limiting the number of supported networks and defining

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<sup>7</sup> See Notice of Proposed Rulemaking, *I/M/O High Cost Universal Service Support Federal-State Joint Board on Universal Service*, WC Docket No. 05-337; CC Docket No. 96-45 (rel. May 14, 2007).

areas of support more clearly, will assist in distributing the funds in a more appropriate manner to only those who actually need it.

The Board recommends that the Commission continue the current definition of supported services<sup>8</sup> but limit support to primary lines only. Also, as described below, the decision as to whether or not broadband services should be funded through the Universal Service High Cost Fund should be deferred until more information is available from the Commission's data collection proceedings, and the availability of funds for rural broadband deployment from other sources, such as the Rural Utilities Service, is considered. Funding broadband would only serve to replace the current inequitable redistribution of funds from urban to rural states for voice services, with a (potentially more expensive) fund to deploy broadband services in those same rural states. It is more appropriate to control the flow of funds through a more equitable distribution of support in a more targeted manner. With that said, the Board recommends a reverse auction that would limit the number of "winners" who would receive support to no more than two (2) per study area.

As described below, there are proposals for such an auction, such as one proposed by Verizon that would accomplish this goal.<sup>9</sup> It is vital to the survival of the Fund that the number of supported networks be reduced. A reverse auction

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<sup>8</sup> 47 U.S.C. § 214(e)(1)(A). The services that are supported by the federal universal service support mechanisms are: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. *See* 47 C.F.R. § 54.101.

<sup>9</sup> *See infra*, n. 12.

will also finally put an end to the inappropriate use of the Fund as a stimulus to competitive entry into areas where it is uneconomical for even one provider. New Jersey should be relieved of the burden of funding competitive entry in rural states.

The Board recommends that the use of reverse auctions would replace all the various high cost support sub-funds with one payment, as well as eliminate a second major flaw in the current program, the identical support rule. Under the current rules, competitive ETCs (“CETCs”) are funded based upon the costs of the incumbent local exchange carrier (ILEC) and there is currently no evidence that the costs are identical or even similar; in fact, the costs of the CETCs (which consist mostly of wireless carriers) are likely less. By using a reverse auction, these disparities are removed since the carrier will bid based upon its own cost structure and ability to serve all customers. With appropriate safeguards, such as minimal service quality/penalties and carrier of last resort obligations, a reverse auction eliminates the very costly identical support rule.

## **COMMENTS**

### **Reverse Auctions**

As articulated in our comments last fall, the Board is encouraged that the Commission is seeking new, alternative methods by which monies are distributed from the Fund, and the concept of a reverse auction is appealing, however, only

if the auction limits the number of supported networks in each area.<sup>10</sup> In our previous comments to the Commission, we stated that in order to have a successful auction, where carriers compete for support, there must be a small, limited number of auction winners; otherwise there will be a continuation of the current process which permits large numbers of eligible carriers in a given area to draw monies from the high cost portion of the Fund, thereby perpetuating the unchecked growth of high cost support.

As referenced in the Notice, since that time, some parties, such as Verizon, CTIA-The Wireless Association and Alltel, have proposed various reverse auction plans.<sup>11</sup> The Board would support a reverse auction design that contains at a minimum a framework as described below. Many of these principles are contained in the proposal submitted by Verizon referenced in the Notice, which was presented to Commissioners Tate and Baum, dated February 9, 2007.<sup>12</sup> The Board encourages the Commission to carefully review that proposal which has the potential to significantly reduce the size of the Fund, yet make a sufficient amount available to meet the Universal Service goals of the 1996 Telecommunications Act. The reverse auction process proposed by Verizon contains the following concepts that are supported by the Board:

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<sup>10</sup> See Comments of the New Jersey Board of Public Utilities, *I/M/O Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, WC Docket No. 05-337 (October 10, 2006,).

<sup>11</sup> See Notice at ¶4.

<sup>12</sup> See *id.*; Letter from Kathleen Grillo, Vice President Federal Regulatory, Verizon to Hon. Deborah Taylor Tate, Federal Chair and Hon. Ray Baum, State Chair, Federal-State Joint Board on Universal Service, *In the Matter of Federal-State Joint Board on Universal Service, High Cost Universal Service Support*, WC Docket No. 05-337; *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (February 9, 2007).

- Capping support to all recipients based on current levels. The cap would stabilize the fund and provide a starting point for auctions.
- A framework for competitive bidding, including administrative arrangements and the design of the bidding process itself.
- Qualified bidders that would be eligible to participate in the bidding process would be providers who have been designated as ETCs in the area.
- Initiates the use of competitive bidding in high cost areas where there are multiple wireless CETCs. These auctions would select a single wireless provider of universal service for each area. The incumbent local exchange companies in those areas would continue to receive support based on the capping mechanism. Once the wireless CETC auctions had been completed, the FCC would also nominate any area where there is at least one wireline CETC. These auctions would select a single wireline provider of universal service for each of those areas.
- ETCs would be bidding for the obligation to serve as the provider of universal service in a high cost area, in return for which it would receive financial support equal to the amount of its bid. The Commission, in cooperation with the states, would develop the winning bidder's obligations, and in return for the universal service support, the winning bidder would be required to offer service in the entire area, and to meet any other terms required by the Commission and/or the State.



- These obligations could include fines, forfeiture of bond amounts, and being barred from participation in any subsequent auctions. The winning bid would be awarded for a set term.
- Each bidder would bid a flat dollar amount of subsidy – the total amount the ETC would accept in order to take on the universal service obligation for a given high cost area. Each bidder would base its bid on its own business plan, which would include the bidder's own assessment of many factors it would expect to serve within each area.
- After some reasonable period, the FCC would review the experience it had gained with the CETC auctions, and consider a single auction in which both wireline and wireless ETCs would participate, which would select a single universal service provider for each area.

The Board suggests that the above framework sets forth the obligation to serve a specified area at an acceptable quality of service for a specified term, thus selecting the most cost – effective provider. This proposal limits the number of supported networks in each area, and therefore minimizes the burden on customers providing the support, specifically consumers in New Jersey.

#### GIS Technology and Network Cost Modeling

In 2005, New Jersey consumers contributed a total of \$246 million to the total \$6.6 billion Universal Service Fund. Service providers received \$55 million in support payments resulting in New Jersey consumers contributing \$191 million in excess of support received. With respect to the largest component of the fund,

the high cost fund, New Jersey service providers received \$1.3 million out of the \$3.8 billion high cost fund. As a donor state, the prevailing interest of New Jersey is to ensure that the calculations utilized to ascertain contribution and distribution amounts are open, fair and equitable and provide support for only those consumers and service providers who are truly in need. To the degree that technologically advanced methods such as geographic information systems technology and network cost modeling can more precisely identify high cost areas and thus enables the calculation and targeting of support at more granular levels, the Board would support these methods, provided they result in reduced payments overall. While our expertise in these areas is limited, we would encourage the Commission to choose a technology or modeling technique that provides the most accurate data. While not endorsing the plan, the Board suggests that the Commission carefully review the Embarq plan referenced in the Notice in an effort to more finely target support to only those areas of need.<sup>13</sup> Consistent with our previous remarks, the high cost fund cannot and should not be increased under any circumstances and new techniques that more precisely target distributions are not appropriate unless these techniques reduce the size of the fund.

#### Disaggregation of Support

The Board has limited experience on this issue due to the fact that New Jersey service providers receive an infinitesimal amount of high cost funds (\$1.3 million from the \$3.8 Billion high cost fund). Notwithstanding, New Jersey

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<sup>13</sup> See Notice at ¶5.

submits that the current system of disaggregation does not appear to result in a sufficient degree of targeted support payments and that the Commission should require all carriers to disaggregate support below the study area, i.e., the wire center level. Consistent with our previous remarks, disaggregation systems must reduce the level of the fund. To this end, the Embarq proposal for support at the sub-wire center level should be closely reviewed by the Commission.<sup>14</sup>

### Competitive ETC Support

The funding of multiple ETCs is not efficient and must be reduced and ultimately eliminated. There is no economic basis for funding more than one network when one network is not sustainable without support. The Board recommends that the Commission immediately eliminate the identical support rule. The Board further recommends the implementation of reverse auctions as suggested above, which will eliminate the issue of how to fund multiple carriers in high-cost areas. As proposed, the reverse auction could begin with two (2) carriers receiving support as a transition to ultimately one recipient per study area.

### Broadband

The Board has been a proponent of broadband deployment since 1992, when New Jersey Bell, now Verizon, was ordered to deploy broadband capability throughout its service territory by 2010. The Board contends, however, that adding broadband to the list of supported services at this time would exacerbate

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<sup>14</sup> See Notice at ¶5, n.14.

the current problems with the high cost fund, particularly the size of the fund. As a donor state, we contend that the current level of support for those consumers receiving voice services is already too high, and the possibility of adding broadband without sufficient data on the impact of such added support, would worsen an already critical problem.

As a result of the Commission's release of several inquiries into the status of broadband deployment,<sup>15</sup> the Commission is in the early stages of collecting data necessary to provide additional information which can be utilized to evaluate broadband deployment in the future. The Board recommends that the Commission await the outcome of the NOI which will provide among other things, the definition of advanced telecommunications capability; the availability of broadband; an indication of whether consumers are adopting new services; and information on the level of competition in the marketplace. The Commission is also seeking comments on external data sources for prices and competing providers of broadband service, all of which are vital to determining if support for broadband is even necessary.

The Board also recommends that the Commission await the outcome of the NPRM seeking comment on whether to modify collection of speed tier information and how to improve the data collected about wireless broadband

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<sup>15</sup> See Notice of Inquiry, *I/M/O Inquiry Concerning The Deployment Of Advanced Telecommunications Capability To All Americans In A Reasonable And Timely Fashion, And Possible Steps To Accelerate Such Deployment Pursuant To Section 706 Of The Telecommunications Act Of 1996*, GN Dkt No. 07-45 (rel. April 16, 2007).("NOI"); See Notice of Proposed Rulemaking, *I/M/O Development Of Nationwide Broadband Data To Evaluate Reasonable And Timely Deployment Of Advanced Services To All Americans, Improvement Of Wireless Broadband Subscribership Data, And Development Of Data Interconnected Voice Over Internet Protocol (VoIP)*, WC Dkt No. 07-38 (rel. April 16, 2007) ("NPRM") .

Internet access service. By initiating these data gathering inquiries, the Commission recognizes that it is necessary to find the most accurate way to collect information about subscribership and a more accurate picture of current broadband deployment, current prices and consumer uptake of broadband services, before any determination can be made that support for broadband is necessary from the USF.

Finally, the Board encourages the Commission to consider other sources of funds to encourage broadband deployment where it is necessary to do so. For example, increased use of federal loans from the Rural Utilities Service<sup>16</sup> and/or tax incentives may be more appropriate sources of targeted support for broadband deployment.

### **CONCLUSION**

The time has come to enact significant structural changes to the high cost fund so that the payments to service providers receiving support from this program is brought under control. Utilizing the high cost fund to support multiple service providers is not efficient and has resulted in excessive growth in contributions. There is no economic basis for funding more than one network when one network is not sustainable without support. Distributions should be limited to only those consumers and service providers who are truly in need and only to ensure affordable access. A reverse auction, limited to no more than two

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<sup>16</sup> See Press Release, *USDA Announces New Proposed Rules For Broadband In Rural Communities*, USDA Rural Development (May 11, 2007).

(2) winners, as more fully explained herein, is appropriate and necessary. The utilization of GIS technology and network cost modeling are appropriate if these techniques result in more precise targeting of support and reductions in the overall level of support. Current support to Competitive ETCs should be limited and eventually phased out. Until more specific information is available on broadband deployment issues under review in the two proceedings initiated by the Commission, broadband services should not be an additional supported service from the Fund at this time.

Respectfully submitted,

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DATED: May 31, 2007

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